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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,368	09/28/2004	Joachim Bunger	MERCK-2926	3834
23599 7590 10/19/2009 MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201				
EXAMINER HUGHES, ALICIA R				
ART UNIT		PAPER NUMBER		
1614				
NOTIFICATION DATE		DELIVERY MODE		
10/19/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@mwzb.com

Office Action Summary

Application No.

10/509,368

Applicant(s)

BUNGER ET AL.

Examiner

ALICIA R. HUGHES

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3, 12, 14-16 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 12, 14-16 and 20-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of the Claims

Claims 3, 12, 14-16, and 20-24 are pending and the subject of this Office Action. Claims 1-2, 4-11, 13 and 17-19 have been cancelled. Applicants, in their filing of 15 June 2009, added new claims 21-24.

Applicants' arguments, filed on 15 June 2009, have been fully considered and are, in part, deemed to be persuasive regarding the previous rejection. Rejections and objections not reiterated from previous Office Actions are hereby withdrawn.

Upon reconsideration of the pending claims, as presented, the following new rejections are applied. They constitute the complete set of rejections being applied to the instant application presently.

Applicants claims 14, 15 and 20 have been reconsidered and are now deemed to read on the elected subject matter and thus are herein acted on the merits. The requirement for restriction is thus now rendered moot.

Claim Rejection – 35 U.S.C. §103(a)

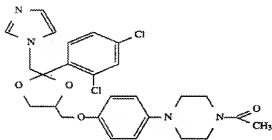
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 12, 14-16, and 20-24 are rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 5,476,852 [hereinafter referred to as "Cauwenberg"] in view of Mohammad, Taj,

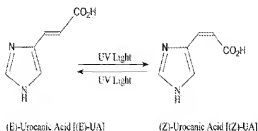
"Laser-induced In Vitro Isomerization of Urocanic Acid in UVA Region and the Origin of Excited Triplet State," *Tetrahedron Letters*, Vol. 43, pages 8897-8900 (2002)[hereinafter referred to as "Mohammad"].

As noted prior, Cauwenberg et al disclose ketoconazole, (+)-cis-1-acetyl-4-[4[[[2-(2,4-dichlorophenyl)-2-(1H-imidazol-1-ylmethyl)-1,3-dioxolan-4-yl]methoxy]phenyl]piperazine, as reflected below



as effective in treating subjects affected by the photoaging of the skin (Col 1, lines 45-63 and Col. 2, lines 50-55). The same is usable in a pharmaceutically acceptable acid addition salt form as well as solvates (Col. 2, lines 1-20) and can be used alone (Col. 4, lines 16-23). Additionally, Cauwenberg et al disclose that the active ingredient is present in an amount typically ranging from 0.1 to 10% (Col. 3, lines 47-52) and are used in the pharmaceutical and cosmetic arts (Col. 4, lines 7-20).

Mohammad discloses urocanic acid, 2-propenoic acid, 3-[1H-imidazol-4(5)-yl][hereinafter referred to as "Urocanic acid"], as reflected below, as a chemical of interest to photochemists, medicinal chemists, and immunologists, etc due to its light absorbing properties and presence in the upper layer of mammalian skin (Page 8897, Col. 1, Para. 1) and that the same and its chemical reactivity with biological molecules in excited states have consequences in the photoaging of the skin (Page 8900, Col. 1, Para. 2).



With regard to limitations that require the isolated stereoisomeric form of a compound of the instant invention, in the absence of express evidence to the contrary it would be well within the purview of the skilled artisan if there would be a benefit to obtain the same.

The teachings of Mohammad would motivate one of ordinary skill in the art to modify the teachings of Cawenberg to reach the instant invention given the overlapping subject matter, most notable the administration of imidazol compounds to treat photoaging in skin.

In view of the foregoing, it would have been prima facie obvious to one of ordinary skill in the art at the time the instant invention was claimed to use the compounds of formula 1a and 1b to treat protect the human skin against aging.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Hughes whose telephone number is 571-272-6026. The examiner can normally be reached from 9:00 A.M. until 5:00 P.M. on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached at 571-272-0718. The fax number for the organization where this application is proceeding is assigned 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alicia R. Hughes/
Examiner, Art Unit 1614

/Raymond J Henley III/
Primary Examiner, Art Unit 1614